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7 JACKSON SHERRY,  
8 Plaintiff,  
9 v.  
10 SIMA BARNYARD, LLC, et al.,  
11 Defendants.

Case No. [23-cv-02046-DMR](#)

**ORDER ON MOTION FOR ORDER  
DETERMINING GOOD FAITH  
SETTLEMENT**

Re: Dkt. No. 21

12 Plaintiff Jackson Sherry filed a complaint alleging that Defendants Sima Barnyard, LLC  
13 (“Sima”) and Barnyard Carmel, LLC (“Barnyard Carmel”) violated the Americans with  
14 Disabilities Act (“ADA”), 42 U.S.C. § 12101 *et seq.* and state law. Plaintiff and Sima reached a  
15 settlement of Plaintiff’s claims and Sima now moves pursuant to California Code of Civil  
16 Procedure section 877 for determination that its settlement with Plaintiff is in good faith. [Docket  
17 No. 21.] Plaintiff and Barnyard Carmel filed statements of non-opposition to the motion. [See  
18 Docket Nos. 28, 32.] This matter is suitable for resolution without a hearing. Civ. L.R. 7-1(b).  
19 For the following reasons, the motion is granted.

20 **I. BACKGROUND**

21 Barnyard Shopping Village (“Barnyard Village”) is a multi-level outdoor shopping center  
22 in Carmel-By-The-Sea, California. Sima owned and operated Barnyard Village at all times  
23 relevant to Plaintiff’s claims prior to selling the shopping center in March 2023 to Barnyard  
24 Carmel. [Docket No. 9 (Am. Compl.) ¶¶ 1, 2, 9.] Barnyard Carmel is the current owner and  
25 operator of Barnyard Village. *Id.* at ¶ 10. Plaintiff is a person with a disability who uses a manual  
26 wheelchair for mobility. *Id.* at ¶¶ 8, 11. He lives about three miles away from Barnyard Village  
27 and visits on a regular basis to frequent the businesses there. He alleges that the lack of accessible  
28 paths of travel throughout the shopping center, including between the three levels, make it

1 “difficult and dangerous” to access certain businesses and deny him access to the shopping center.  
2 *Id.* at ¶¶ 1-4, 17-20.

3 Plaintiff filed this lawsuit against Sima in April 2023 alleging violations of the ADA;  
4 California’s Unruh Act, California Civil Code sections 51 and 52; and California Health and  
5 Safety Code sections 19955 *et seq.* He filed an amended complaint in June 2023 adding Barnyard  
6 Carmel as a Defendant. In August 2023, Plaintiff and Sima agreed to a settlement under which  
7 Sima will pay Plaintiff \$22,500 in exchange for a full release of all claims related to alleged  
8 accessibility barriers at the Barnyard Village. [Docket No. 21-1 (Curtis Decl. Sept. 12, 2023) ¶ 2.]

## 9 **II. LEGAL STANDARD**

10 A settling party in a federal action involving California claims may move for a good faith  
11 determination of settlement under California Code of Civil Procedure sections 877 and 877.6,  
12 which govern settlements among joint tortfeasors. *See Fed. Savings & Loan Ins. Corp. v.*  
13 *Butler*, 904 F.2d 505, 511 (9th Cir. 1990); *see, e.g., Loskot v. Dog House*, No. C-11-04867 JSC,  
14 2013 WL 255953, at \*2 (N.D. Cal. Jan. 23, 2013) (analyzing motion for good faith settlement  
15 under Cal. Code Civ. Proc. §§ 877, 877.6 in case with ADA claims); *Yanushkevich v. Fry's Elecs., Inc.*,  
16 No. 15CV04830BLFSVK, 2017 WL 2457111, at \*2-3 (N.D. Cal. May 11, 2017), *report and*  
17 *recommendation adopted*, No. 15-CV-04830-BLF, 2017 WL 2438559 (N.D. Cal. June 6, 2017)  
18 (same). A good faith settlement of claims against “one or more of a number of tortfeasors claimed  
19 to be liable for the same tort” will not “discharge any other such party from liability unless its  
20 terms so provide, but it shall reduce the claims against the others.” It will also effectively  
21 “discharge the party to whom it is given from all liability for any contribution to any other  
22 parties.” Cal. Code Civ. Proc. § 877(a), (b). If the court determines the settlement is made in  
23 good faith, its order “bar[s] any other joint tortfeasor or co-obligor from any further claims against  
24 the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or  
25 comparative indemnity, based on comparative negligence or comparative fault.” Cal. Code Civ.  
26 Proc. § 877.6(c); *John Hancock Mut. Life Ins. Co. v. Setser*, 42 Cal. App. 4th 1524, 1529 (1996).  
27 Sections 877 and 877.6(c) are aimed at two objectives: “equitable sharing of costs among the  
28 parties at fault, and . . . encouragement of settlements.” *Tech-Bilt, Inc. v. Woodward-Clyde &*

1      Assoc., 38 Cal. 3d 488, 494 (1985). “The good faith provision of section 877 mandates that the  
2      courts review agreements purportedly made under its aegis to insure that such settlements  
3      appropriately balance the contribution statute’s dual objectives.” *Id.*; *see also Butler*, 904 F.2d at  
4      511 (“The obvious purpose of this statute is to determine at an early state what effect, if any, a  
5      settlement has on the setoff against other defendants and on contribution rights.”).

6      Any party is entitled to a hearing on the issue of a good faith settlement; however, a  
7      settling party may proactively file a motion for good faith determination of the settlement. Cal.  
8      Civ. Proc. Code § 877.6(a). The application must “indicate the settling parties, and the basis,  
9      terms, and amount of the settlement.” Cal. Civ. Proc. Code § 877.6(a)(2). In the absence of any  
10     opposition, the court may approve the motion without a hearing. *Id.*

11     In *Tech-Bilt*, the California Supreme Court established a set of factors to determine  
12     whether the “good faith” requirement is satisfied when reviewing a motion submitted under  
13     section 877.6:

14     [T]he intent and policies underlying section 877.6 require that a  
15     number of factors be taken into account including a rough  
16     approximation of plaintiffs’ total recovery and the settlor’s  
17     proportionate liability, the amount paid in settlement, the allocation  
18     of settlement proceeds among plaintiffs, and a recognition that a  
19     settlor should pay less in settlement than he would if he were found  
20     liable after a trial. Other relevant considerations include the financial  
21     conditions and insurance policy limits of settling defendants, as well  
22     as the existence of collusion, fraud, or tortious conduct aimed to injure  
23     the interests of nonsettling defendants.

24     38 Cal.3d at 499. A party opposing a determination of good faith “must demonstrate . . . that the  
25     settlement is so far ‘out of the ballpark’ in relation to these factors as to be inconsistent with the  
26     equitable objectives of the statute.” *Id.* at 499-500.

27     A party asserting the absence of good faith carries the burden of proof. Cal. Civ. Proc.  
28     Code § 877.6(d). On account of this burden, “only when the good faith nature of a settlement is  
29     disputed” must the court “consider and weigh the *Tech-Bilt* factors.” *City of Grand Terrace v.*  
30     *Superior Court*, 192 Cal. App. 3d 1251, 1261 (1987). Otherwise, if no party objects, “the  
31     barebones motion which sets forth the ground of good faith, accompanied by a declaration which  
32     sets forth a brief background of the case is sufficient” to establish that the settlement was reached

1 in good faith. *Id.*; *see also Res-Care Inc. v. Roto-Rooter Servs. Co.*, No. C 09-3856 EDL DMR,  
2 2011 WL 3610701, at \*2 (N.D. Cal. Aug. 17, 2011) (collecting cases).

### 3 **III. DISCUSSION**

4 In this case, Sima submits a declaration by counsel who describes the terms of the  
5 settlement between Sima and Plaintiff and states “[t]he settlement resulted from arm’s-length  
6 negotiations between [counsel] and Plaintiff’s counsel.” Curtis Decl. ¶ 3. He explains that “[o]ne  
7 purpose of the settlement is to settle Plaintiff’s claims against Sima at this early stage in the  
8 litigation” without incurring additional attorneys’ fees and costs. *Id.*

9 Barnyard Carmel filed a statement of non-opposition to the motion. Accordingly, the court  
10 does not need to evaluate the settlement under the *Tech-Bilt* factors. *See* Cal. Civ. Proc. Code §  
11 877.6(d) (indicating presumption of good faith). Nevertheless, the court concludes that the *Tech-*  
12 *Bilt* factors favor granting the motion. Several of the *Tech-Bilt* factors do not apply here. There  
13 was no evidence of collusion, fraud, or tortious conduct, there was only a single plaintiff, and there  
14 is no evidence that Sima is burdened by financial conditions or insurance policy limits of  
15 particular relevance to this settlement.

16 The remaining salient *Tech-Bilt* factors are the amount paid and Sima’s proportionate  
17 liability. Under the settlement, Sima will pay Plaintiff \$22,500. Sima no longer owns the  
18 Barnyard Village. As a result, its potential liability is solely for damages and attorneys’ fees, and  
19 costs. The injunctive relief Plaintiff seeks by way of remediation of the access barriers does not  
20 apply to Sima. As to damages, the Unruh Act authorizes statutory damages of “no less than four  
21 thousand dollars (\$4,000)” for each occasion on which a plaintiff was denied equal access. Cal.  
22 Civ. Code § 52(a); *see also* Cal. Civ. Code § 55.56(a) (authorizing statutory damages “if a  
23 violation or violations of one or more construction-related accessibility standards denied the  
24 plaintiff full and equal access to the place of public accommodation on a particular occasion.”).  
25 The statute specifies that there has been a denial of full and equal access “if the plaintiff personally  
26 encountered the violation on a particular occasion, or the plaintiff was deterred from accessing a  
27 place of public accommodation on a particular occasion.” Cal. Civ. Code § 55.56(b). While  
28 Plaintiff alleges that he visits Barnyard Village “on a regular basis to frequent the businesses

1 there,” he alleges he encountered access barriers during two specific visits: on October 29, 2021,  
2 before Sima sold Barnyard Village to Barnyard Carmel, and on May 28, 2023, after the sale. *See*  
3 Am. Compl. ¶¶ 9, 17, 21, 24. Therefore, based on the operative complaint, Sima’s potential  
4 exposure to Unruh Act damages appears to be limited to \$4,000 for the October 2021 visit.  
5 Further, the litigation is at an early stage. The complaint was filed in April 2023 and there has  
6 been no motion practice; in fact, Plaintiff and Barnyard Carmel recently stipulated to extend the  
7 deadline to complete the required joint site inspection to November 30, 2023. Accordingly, there  
8 is no basis from which the court can conclude that the \$22,500 settlement is not well within the  
9 “ballpark” of Sima’s potential liability, and the court concludes that the settlement amount is fair  
10 and reasonable under the circumstances. Accordingly, the court concludes that Sima’s settlement  
11 with Plaintiff was made in good faith.

#### 12 **IV. CONCLUSION**

13 For the foregoing reasons, Sima’s motion for determination of good faith settlement is  
14 granted.

15 **IT IS SO ORDERED.**

16 Dated: November 8, 2023

